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(1)

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No. _____

In the Supreme Court of the United States

October Term, 1991

NORTHWEST FINANCIAL, INC.,,

Petitioner,

v.

STATE BOARD OF EQUALIZATION and
SAN DIEGO COUNTY,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does California's real property tax system violate federal equal protection due to the gross disparities in tax treatment among similarly situated property taxpayers?

Does Proposition 13's welcome stranger provision result in a disproportionate shift in tax burdens to new migrants to California in violation of the right to travel?

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Fourth Appellate District, is reported at 229 Cal. App. 3d 198, 280 Cal. Rptr. 24, and is reprinted in Appendix A.

The California Supreme Court's unreported denial of review is reprinted in Appendix B.

JURISDICTION

The Judgment of the California Court of Appeal was entered on April 10, 1991. The timely petition for review of petitioner Northwest Financial, Inc. was denied by the California Supreme Court on July 11, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

APPLICABILITY OF 28 U.S.C. § 2403(b)

28 U.S.C. § 2403(b) is not applicable in this case since the State Board of Equalization is an agency of the State of California and has been named as a party to the action.

STATUTES/CONSTITUTIONAL PROVISIONS INVOLVED

1. Article XIII of the California Constitution provides:

> Sec. 1. Unless otherwise provided by this Constitution or the laws of the United States:
>
> (a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value.

> The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
>
> (b) All property so assessed shall be taxed in proportion to its full value.

2. The full text of Article XIIIA of the California Constitution (known as "Proposition 13") is set forth in Appendix C. The relevant portion of the text includes the following:

> Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.
>
> Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.
>
> (b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

3. United States Constitution, Article XIV, Section 1 provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; no deny to any person within its jurisdiction the equal protection of the laws.

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In the Supreme Court of the United States

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NORTHWEST FINANCIAL, INC.,

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STATE BOARD OF EQUALIZATION and
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PETITION FOR WRIT OF CERTIORARI

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

The petitioner Northwest Financial, Inc. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, entered in the above-entitled proceedings on April 10, 1991 and for which review was denied by the California Supreme Court on July 11, 1991.

STATEMENT OF FACTS

A. Petitioner's Challenge to Proposition 13.

Petitioner, a Nevada corporation, purchased residential property in La Jolla, California on November 20, 1988. Although the selling property owner's property tax basis had been $175,839 at the time of sale, petitioner's property tax base immediately was increased to petitioner's purchase price paid for the property, which was $730,000. Section 2(a) of Proposition 13, intended as the property tax funding mechanism to ameliorate the effects of the property tax caps provided in Sections 1 and 2(b), was the direct cause of the purchase price step-up in the tax base for the parcel of property. Petitioner filed its complaint in California Superior Court alleging a violation of federal equal protection based upon the discriminatory treatment accorded most recent California real property purchasers, as evidenced by the more than four to one disparity between the tax base of the seller and that of petitioner's property.

Petitioner did not conduct statistical surveys comparing the atual differences in property tax bases prior to filing suit in superior court. However, Petitioner had knowledge of other statistical surveys, soon after filing its case, conducted by two other constitutional challengers to Proposition 13, one of whom has pending her petition for certiorari before the Court. *Stephanie Nordlinger v. Kenneth Hahn*, No. 90-1912. Such statistical studies have shown great disparities in property taxes paid between longtime owners and new purchasers.

B. Stage in the Proceedings/Manner in Which Federal Questions Were Raised Below.

After exhausting its administrative remedies, petitioner filed its complaint in San Diego County Superior Court on April 12, 1989, prompted in large part by this Court's decision in *Allegheny Pittsburgh Coal v. County Commission of Webster Co., W. Va.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989), holding unconstitutional Webster County, West Virginia's property tax assessment practice, which practice was similar to the operational effect of Proposition 13's Section 2(a).

Respondents San Diego County and State Board of Equalization demurred to petitioner's complaint alleging a failure of a cause of action in light of the California Supreme Court's decision in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 149 Cal. Rptr. 239 (1978). The California Supreme Court had upheld Proposition 13 against a federal equal protection challenge and a right to travel argument. The 1978 California challengers did not seek certiorari to this Court.

The San Diego County Superior Court sustained respondent's demurrer on September 14, 1989. *See* Appendix D for Order Sustaining Demurrer of San Diego County and the Demurrer of the State Board of Equalization Without Leave to Amend and Directing Entry of Judgment. Petitioner timely appealed the decision of the superior court to the California Court of Appeal, which found binding on that court the *Amador* decision and, therefore, the superior court decision was sustained on April 10, 1991.

Petitioner petitioned for review to the California Supreme Court, which petition was denied on July 11, 1991. *See* Appendix B.

C. Discriminatory Aspect of Proposition 13.

Proposition 13 imposed limits on the ad valorem property tax system in place at the time of Proposition 13's passage by public referendum in 1978. Sections 1(a) and 2(b) of new Article XIIIA to the California Constitution placed ceilings on the real property tax rate, at one percent of full cash value, and on the annual increase in the property tax base, to a maximum of two percent per annum as an "inflationary" base adjustment. However, left intact was a procedure for decreasing the property tax base in circumstances of declining property values.

The subject of Petitioner's challenge is Section 2(a) of Proposition 13, to the extent full cash value, as a tax base, is defined as the purchase price, or current market, for all property purchased, newly constructed or changing ownership after the compilation of the 1975-76 property tax roll. This funding mechanism has been referred to as the acquisition value approach of Proposition 13. The misnomer is that such approach is not uniformly applied to all real property taxpayers. In any event, it is the "change-of-ownership" aspect of Section 2(a) of Proposition 13 which results in the gross disparities in property taxes levied throughout California.

REASONS FOR GRANTING THE WRIT

I.

THE PROPERTY TAX DISPARITIES RESULTING FROM PROPOSITION 13'S ACQUISITION VALUE APPROACH METHOD OF TAXATION ARE NOT JUSTIFIABLE WHEN MEASURED AGAINST THE EQUAL PROTECTION TESTS SET FORTH IN *ALLEGHENY*.

Section 2(a) of Proposition 13 arguably established two distinct property tax systems: one based on the 1975-76 tax roll, referred to as the "rollback class;" and the second of which is the acquisition value system. Both systems have common elements, such as the rate and annual base adjustment ceilings; nonetheless, the state constitutional and statutory starting points in calculating property taxes are distinctly different. A better explanation of the foundation of California's current property tax system may be that the ad valorem system in effect in 1978 was modified, such that the rollback class benefitted from a freeze of tax bases as at the 1975-76 market value, whereas all other property owners, not within the rollback group, would be subjected thereafter to actual ad valorem property base taxation. Of course, both groups, rollback and acquisition value, would benefit from the same limitations on increasing property taxes imposed by Sections 1 and 2(b) of Proposition 13.

In *Allegheny*, the Court reviewed a real property tax system implemented in Webster County, West Virginia, which in practice was identical to the system mandated by Proposition 13. Although the West Virginia Constitution required uniformity in real property

taxation throughout the state based on the market value of each parcel of property, the Webster County Assessor was reassessing newly purchased real property in order to reflect the most current purchase prices paid, whereas, similar properties in the area were not reasssessed to their current values. The resulting disparities in tax bills for similar properties amounted to as much as 35 to 1. Moreover, the equalization of such properties, through adjustments by the assessor, never could be achieved.

Although California's property tax system operates in the same manner as the Webster County system analyzed in *Allegheny*, this Court declined to opine on the validity of the California system as compared to the Webster County practice before the Court. *Allegheny*, 488 U.S. at 344 n.4, 109 S.Ct. at 638 n.4. California courts have now compared the two property tax systems, that of Webster County, West Virginia and Proposition 13, and have found distinctions that necessarily rely upon interpretations of the constitutional guidelines set forth in *Allegheny*. Petitioner respectfully submits that the decision of the state court below conflicts with the *Allegheny* decision.

A. Property Taxpayers Subject to The Same System of Taxation Must be Taxed in a Roughly Comparable Manner.

This Court, in *Allegheny*, began its analysis by reaffirming the constitutional validity of creating classes which will suffer varying tax burdens. *Id.* at 344, 109 S.Ct. at 637-38. Generally, classifications drawn for property tax purposes are between "kinds of property," such as commercial and residential, or "types of taxpayers," such as corporations and individuals. In cases where the classification reasonably relates to some state policy, properly identified, the tax system will be

upheld. *Id.*, citing *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573, 30 S.Ct. 578, 580 (1910). The Court then concluded that West Virginia had not drawn classifications for purposes of its property tax system. *Allegheny*, 488 U.S. at 345, 107 S.Ct. at 638.

To the extent that state law does not draw distinctions, property tax owners are similarly situated and "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." *Id.* at 346, 109 S.Ct. at 639. *Allegheny* provided, as a constitutional guideline, that a state's property tax system must achieve "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* at 343, 109 S.Ct. at 638, citing *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-27, 79 S.Ct. 437, 440-41 (1959). In applying this guideline to the Webster County practice, significant disparities in tax treatment (8 to 35 times to 1) were evident enough to result in a violation of equal protection.

The state court of appeal below failed to follow the direction of *Allegheny* that a rationalization of the property tax system will not save a system which discriminates against a class that has not been identified as one intended to bear additional tax burdens. There is no difference between a pure ad valorem property tax system which is operated discriminatorily through state action, and an acquisition value system which operates mechanically to discriminate. The crux is whether the system is intended to be applied or operate in a discriminatory manner.

The only conceivable classification imagined from the enactment of Proposition 13, as found by the state court

of appeal, is that which is based purely on the timing of the purchase of property. Yet, such classifications are not found from the enactment of Proposition 13; rather, it is mere happenstance, not state policy, which sets such hypothetical classifications.

B. The Discrimination Propagated by Proposition 13 Cannot be Rationalized to Meet Equal Protection Guidelines.

Proposition 13 may have been an aggressive step to curb rising property taxes for California voters in 1978, however, it is clear that the burden of property taxation was to fall on new purchasers, whether new migrants to California or those Californians who chose to purchase a new home. If classifications are to be gleaned from Proposition 13, then most recent purchasers were targeted as an ever changing class, probably on an annual basis. Such classifications are not legitimate means to achieving those policy reasons for adopting the Proposition 13 tax system, which have been enunciated by the California Supreme Court.

The policies to be fostered by Proposition 13 were stated in *Amador* as instilling certainty and predictability in the tax system, and to limit property tax on unrealized appreciation in the property. *Amador*, 22 Cal. 3d at 235, 149 Cal. Rptr. at 251. There is no more certainty and predictability in the acquisition value approach, sufficient to justify gross disparities in property tax bills among neighbors, than there is if one assumes California property owners are fairly knowledgeable about their local property market. In a time of declining property values, moreover, the certainty and predictability ends will not be satisfied as to the majority of taxpayers who will apply for reduction in their tax bases.

Whether Proposition 13 protects against the taxation of unrealized gains is also questionable. Proposition 13 merely shifts the property tax on the seller's unrealized gain to the purchaser. It is difficult to imagine how there is protection for all taxpayers subject to the acquisition value system when new purchasers in the system are subject to increased property tax based on the seller's previously unrealized gain.

In sum, *Amador's* stretch to find policies which support the Proposition 13 mandate to shift real property tax burdens to new purchasers, many of whom are new arrivals to California, should not be found rational under any constitutional standard.

II.

PROPOSITION 13 DISPROPORTIONATELY BURDENS NEW ARRIVALS TO CALIFORNIA IN VIOLATION OF THE FUNDAMENTAL RIGHT TO TRAVEL.

This Court's 1980's decisions in right to travel cases have yet to be applied correctly by California state courts which have reviewed the constitutionality of Proposition 13 after *Amador* was decided in 1978. The state court of appeal mischaracterized the issue as one involving "residency," and reasoned that since nonresident property owners benefitted to the same extent as resident property owners, there was no intention in Proposition 13's enactment to burden nonresidents. *Northwest Financial, Inc. v. State Board of Equalization*, 229 Cal. App. 3d 198, 206-7, 280 Cal. Rptr. 24, 29 (1991). The right to travel protection is not limited by a technical definition of "residency;" rather, the protection is that those physically present within a state should be prohibited from enacting laws that will benefit them to

the detriment to those who arrive to the state after the date of enactment.

In *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985), this Court found unconstitutional a New Mexico statute which granted a $2,000 property tax exemption to Vietnam veterans who were New Mexico residents before May 8, 1976. The state had proffered the rationalization that past Vietnam veteran residents were being rewarded for their past service to the state. The Court found that such a rationale, although understandable as a state policy, could not justify actual discrimination against new residents, and, therefore, held that the discriminatory provision could not pass the minimum rationality test.

In *Hooper*, the Court followed the constitutional analysis undertaken in *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309 (1982), when a state law is found to skew benefits in favor of residents. The Court made clear, in *Hooper*, that a constitutional concern is with state action which directs a discernible benefit to a resident, as of a certain date, which cannot be shared to the same degree by one who is not a resident at that date. Proposition 13's rollback provision clearly benefitted a distinct class of property taxpayers more than it did other property taxpayers. The rollback group will always pay less for the same governmental services, based upon their California property ownership when the 1975-76 tax roll was compiled.

Zobel v. Williams, supra, may be applied more broadly as authority for finding unconstitutional all aspects of Proposition 13's mechanisms for setting taxpayers' property tax bases. In *Zobel*, this Court reviewed an

Alaska statute which provided for affirmative financial benefits, in the form of cash dividends, to its citizenry, in amounts dependent upon the year of Alaska residency. Under the Alaska plan, longtime residents might receive benefits from governmental resources, *i.e.*, oil revenues, which exceeded significantly the benefits received by newer residents. In *Zobel*, the Court found that the state benefit plan before it "create[d] fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state." *Zobel*, 457 U.S. at 59, 102 S.Ct. at 2311.

Proposition 13's acquisition value approach has the same practical effect as the Alaska benefit plan, in that longtime residents are most favored in both systems. It is precisely the unequal effect of state legislation on newer migrants to the state which brings the equal protection clause into play. *Id.* at 60 n.6, 102 S.Ct. at 2312 n.6. In striking down the Alaska scheme as not meeting the minimum rationality standard, the Court broadened its holding by disapproving, as "clearly impermissible" any "state apportionment of rights, benefits, and services according to length of residency." *Id.* at 64, 102 S.Ct. at 2315.

In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986), the Court reviewed New York's preference in grading civil service exams for veterans who were New York residents when entering military service. The Court utilized a heightened scrutiny analysis in arriving at its decision that the state could not present the requisite compelling state interest in discriminating against nonresidents. *Id.* at 911, 106 S.Ct. at 2332. Once again this Court evidenced its concern with state enactments which benefit those

physically present in the state to a greater degree than such enactment could benefit new arrivals to the state.

There is no valid distinction between the burdens imposed on new residents through foregone benefits in the *Hooper, Zobel* and *Soto-Lopez* cases and Proposition 13's disproportionate tax burden on new migrants to California.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,

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APPENDICES

[No. D011121. Fourth Dist., Div. One, Apr. 10, 1991.]

NORTHWEST FINANCIAL, INC., Plaintiff and Appellant, v. STATE BOARD OF EQUALIZATION et al., Defendants and Respondents.

SUMMARY

In an action by a corporation whose tax base on its real property was four times greater than that of the previous owner, against a county and the board of equalization, challenging the provision of Proposition 13 (Cal. Const., art. XIII A, § 2, subd. (a)) that property purchased in 1975 or before will be taxed based on the 1975-1976 tax bill appraisement, whereas property purchased after 1977 will be taxed based on the appraised value at the time of purchase, alleging a violation of equal protection, the trial court sustained defendants' demurrer without leave to amend and dismissed. (Superior Court of San Diego County, No. 611092, Herbert B. Hoffman, Judge.)

The Court of Appeal affirmed. Noting that Proposition 13 classifies taxpayers according to the acquisition value of their real property, thereby tying taxes to the cost of property when purchased, the court held the classifications in the acquisition value system, as opposed to the former current value system, served the rational purpose of protecting real property owners from increased taxes based on increased property values and an inflationary real estate market, thereby satisfying the

equal protection requirements. It held that a recent United States Supreme Court decision, finding an equal protection violation arising from one county tax assessor's aberrational use of a similar acquisition value system, was expressly premised on the fact no rationally based state classification system had been established to support the method, and therefore did not affect the validity of Proposition 13. The court also rejected the contention that Proposition 13 infringes on the constitutional right to travel. (Opinion by Work, J., with Wiener, Acting P.J., and concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a, 1b) **Constitutional Law § 94—Equal Protection—Classification—Property Taxation—Acquisition Value Basis.**—In an action by a corporation challenging the acquisition value property tax provision of Proposition 13 (Cal. Const., art. XIII A, § 2, subd. (a)), alleging a violation of equal protection in that its tax base on real property was four times greater than that of the previous owner, the trial court properly sustained the county's and board of equalization's demurrer without leave to amend and dismissed. Proposition 13 classifies taxpayers according to the acquisition value of their real property, thereby tying taxes to the cost of property when purchased. The classification in the acquisition value system as opposed to

the former current value system, serves the rational purpose of protecting real property owners from increased taxes based on increased property values in an inflationary real estate market, thereby satisfying equal protection requirements. A recent United States Supreme Court decision invalidating a property tax system based on estimated market value did not undermine the validity of Proposition 13, where the decision was grounded on the unequal treatment of taxpayers who—in the absence of a state classification system—were in the same class.

[See **Cal.Jur.3d (Rev)**, Constitutional Law § 319; 8 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 599.]

(2) **Constitutional Law § 82—Equal Protection—Classification—Legislative Power and Discretion—Taxation.**—A challenge to a classification in state tax law will not prevail even it discriminates in favor of a certain class, as long as the discrimination is founded on a reasonable distinction or difference in state policy not in conflict with the federal Constitution. So long as the taxation system is supported by a rational basis, and is not palpably arbitrary, it will be upheld even in the absence of precise, scientific uniformity of taxation.

(3a, 3b) **Constitutional Law§ 52—Right to Travel—Property Taxes—Change From Current Value to Acquisition Value System.**—The right to travel was not unconstitutionally impaired by the

provision in Cal. Const., art. XIII A, changing the assessment and taxation of real property from a current value system to an acquisition value method. The change benefits all property owners, past and future, resident and nonresident. It does not create a classification premised on residency or the length of residency in the state, and thus does not require the determination of whether the classification is justified by a compelling sate interest. Because the acquisition value system carries the benefit of predictability of future tax bills, it could encourage travel more than the former current value system which had no such predictability. The connection between an tax burden arising from the sale and purchase of real property is too tangential to the right to move freely within the state to be viewed as a constitutional infringement on the right to travel.

(4) **Constitutional Law § 59—Governmental Regulation and Restriction of Fundamental Rights—Right to Travel.—** A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right. When a classification drawn by a state—such as a distinction between older and newer residents—burdens the right to migrate, the state must come forward with a compelling justification for the classification. The right to travel protects

the residents of a state from being disadvantaged or treated differently, simply because of the timing of their migration, from other similarly situated residents.

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OPINION

WORK, J.—Northwest Financial, Inc., a Nevada corporation, appeals a judgment sustaining a demurrer in favor of the State Board of Equalization and San Diego County. Northwest's Financial complaint revisits equal protection and right to travel constitutional

challenges to the real property "acquisition value" taxation system established by Proposition 13, which were rejected by our Supreme Court in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 [149 Cal.Rptr. 239, 583 P.2d 1281]. *Amador's* constitutionality analysis anticipated the disparities between property taxes imposed in comparable properties which would arise from the passage of time and inflationary real estate market, which disparity forms the basis of Northwest Financial's current complaint.

Amador has not been undermined by the United States Supreme Court's decision in *Allegheny Pittsburgh Coal v. Webster County* (1989) 488 U.S. 336 [102 L.Ed.2d 688, 109 S.Ct. 633]. *Allegheny's* holding of an equal protection violation arising from one county tax assessor's aberrational use of a similar acquisition value system, is expressly premised on the fact no rationally based state classification system had been established to support the method. In contrast, as elucidated in *Amador*, Proposition 13 classifies taxpayers according to the acquisition value of their real property, thereby tying taxes to the cost of property when purchased. The classifications in the acquisition value system (as opposed to the former current value system) serve the rational purpose of protecting real property owners from increased taxes based on increased property values in an inflationary real estate market, thereby satisfying equal protection requirements.

The demurrer was properly sustained and the judgment is affirmed.

EQUAL PROTECTION

(1a) Northwest Financial argues it has set forth an equal protection cause of action based on the alleged gross tax disparity between comparable properties which has risen from the implementation of Proposition 13 for 12 years, and that equal protection requires roughly comparable taxation between persons within the same classification.[1] As we explain, Northwest Financial's argument ignores the fact that taxpayers owning comparable properties who are taxed differently have been placed in separate classifications. As made clear in *Amador*, Proposition 13 places taxpayers into different classes based on when they purchased their property, in order to effectuate the rational goal of tying taxes to the value of property when it was purchased rather than to the increasing value of property as the years go by. Thus, neighbors who own properties of comparable values, but who are classified differently based on value at the time of purchase, need not be taxed uniformly since the classification has a rational basis related to a legitimate state purpose. In short, no equal protection violation has been shown since the alleged disparity arises from a rationally based classification system, rather than from different treatment of those within the same classification.

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[1]Northwest Financial alleges its tax base on its real property is four times greater than that of the previous owner. Northwest Financial's property, purchased in 1987, was assessed for property tax purposes at its purchase price of $730,000, whereas the tax base of the previous owner was $175,839.

The challenged provision of Proposition 13, enacted in 1978, provides that property purchased in 1975 or before will be taxed based on the 1975-1976 tax bill appraisement, whereas property purchased after 1975 will be taxed based on the appraised value at the time of purchase.[2] *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at pages 235-236, characterizes the new system as an "acquisition value" approach to taxation rather than a "current value" approach. That is, instead of assessing the taxable base premised on the current value of the property in any given year, the taxable base is fixed at the appraised value at the time of purchase (plus a 2 percent annual increase for inflation).

The equal protection challenge in *Amador* included a contention that the "rollback" of assessed valuation would result in invidious discrimination between owners of similarly situated property. (22 Cal.3d at p. 232.) The petitioners in *Amador* argued the rollback of assessed value to the 1975-1976 fiscal year would result in two substantially identical homes, located side-by-side and receiving identical government services, to be assessed and taxed at different levels depending upon their date

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[2]California Constitution, article XIII A, section 2, subdivision (a) states: "The full cash value [to which the 1 percent maximum tax applies] means the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation."

of acquisition. (*Id.* at p. 233.)[3]

Our Supreme Court first noted that the equal protection argument was arguably premature, and the court could decline to consider the issue in the abstract and instead await an actual controversy wherein the disparity was pivotal. However, in the interests of advising the assessors whether to follow the new assessment procedure, the court chose to treat the equal protection issue as a facial attack, and concluded equal protection was satisfied by a rational basis underlying the constitutional provision.

(2) *Amador* cites the general principle that a challenge to a classification in state tax law will not prevail even if it discriminates in favor of a certian class, as long as the discrimination is founded upon a reasonable distinction or difference in state policy not in conflict with the federal Constitution. (22 Cal.3d. at p. 234.) So long as the taxation system is supported by a rational basis, and is not palpably arbitrary, it will be upheld even in the absence precise, scientific uniformity of taxation. (*Ibid.*) In upholding the new assessment procedure, the court in *Amador* rejected the petitioners' citation to a line of cases which hold the intentional, systematic undervaluation of property similarly situated

[3]The rollback feature of Proposition 13 arose from the fact that persons who purchased their property before 1975 would have their taxable base rolled back from the current value to the 1975 value, whereas persons who purchased after 1975 would have a taxable base premised on the value at the time they made the purchase. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal. 3d at p. 236.)

with other property assessed at full value, constitutes an improper discrimination in violation of equal protection. *Amador* distinguishes those cases on the basis that they involved taxation systems which mandated taxation on a current value basis, but they did not state an exception to the general rule that a tax classification or disparity of tax treatment will be sustained as long as it is founded upon some reasonable distinction or rational basis. (Id. at pp. 234-235.)

Amador proceeds to evaluate the taxation system established by Proposition 13—i.e., except for property acquired before 1975, all real property will be taxed at its value at date of acquisition rather than at current value. (22 Cal.3d at p.235) *Amador* holds this "acquisition value" system was reasonable in that the annual taxes of a property owner would bear a rational relationship to the original cost of the property, rather than relate to the unforseen, perhaps unduly inflated, current value. Each property owner would be able to estimate his future tax liability, and the system might operate on a fairer basis than the current value approach.To illustrate, *Amador* states a taxpayer who paid $40,000 in 1975 for his property would be taxed on the basis of that cost, leading to the fair result that his future taxes would reasonably reflect the price he was originally willing and able to pay for his property rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which he could exercise no control. A person who paid $80,000 for similar property in 1977 would be taxed at a higher level which reflected the price he was willing and able to pay for that property. (*Ibid.*) *Amador* rejects the

petitioners' argument that the provision unduly discriminated against person who acquired their property after 1975, since those persons would be assessed and taxed in precisely the same manner as those who purchased in 1975, i.e., on an acuisition value basis predicated on the owner's free and voluntary act of purchase, which was an arguably reasonable basis for assessment. (*Ibid.*)[4]

Regarding the rollback feature which set the valuation of property acquired before 1975 at 1975 levels, the court reasoned that although the selection of a 1975-1976 base year may seem arbitrary, the adoption of a uniform acquisition value system without some cutoff date might have been administratively unfeasible and incapable of producing adequate tax revenue. The base year could be considered comparable to a "grandfather" clause wherein a particular year is chosen as the effective date of new legislation, in order to prevent inequitable results or promote some other legitimate purpose. (22 Cal.3d at p. 236.)

The court in *Amador* rejected the petitioners' argument that property of equal current value had to be taxed equally, regardless of its original cost, (22 Cal.3d

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[4]*Amador* also notes having two taxpayers pay different taxes on substantially identical property was not a wholly novel taxation scheme, i.e., sales tax on two identical items of personalty could vary substantially, depending on the exact sales price and the availability of a discount. A roughly comparable tax system was introduced under Proposition 13, whereby the taxes were closely related to the acquisition value of the property. (22 Cal.3d at pp. 235-236.)

at p.236.) The court reasoned that a system whereby the owner's tax liability bore a reasonable relation to his costs of acquisition, was not wholly arbitrary or irrational, thereby meeting the demands of equal protection. (*Id.* at p. 237.)

(1b) We see no difference between the arguments resolved in *Amador* and those now presented on this appeal. *Amador* holds there is no violation of equal protection from an "acquisition value" taxation scheme which classifies taxpayers according to the value of their property at purchase. The classification relates to the reasonable purpose of limiting tax burdens arising from increases in the value of property in an inflationary real estate market. Contrary to Northwest Financial's suggestion, the *Amador* opinion does not confine its analysis to the different treatment of taxpayers assessed at the 1975-1976 bas level (i.e., the "rollback" class), but rather extends it broadly to the different treatment among all taxpayers subject to the post-1975 acquisition value taxation system.

Northwest Financial's citation to *Allegheny Pittsburgh Coal v. Webster County, supra*, 488 U.S. 336, does not support a reevaluation of *Amador's* holding. In *Allegheny*, the court found an equal protection violation arising from a county tax assessor's policy of valuing real property on the basis of its recent purchase price, while only making minor modifications in the assessments of land not recently sold, resulting in gross disparities in the assessed value of generally comparable property. (*Id.* at pp. 338-342 [102 L.Ed.2d at pp. 693-

696].) *Allegheny's* holding is expressly premised on the fact the state had not distinguished between the differently treated taxpayers, but rather had a singular system of taxation based on estimated market value, and the individual county assessor had apparently on her own initiative devised a different system.(*Id.* at p. 345 [102 L.Ed.2d at p. 698].) *Allegheny* acknowledges the general principle that a state may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable.(*Ibid.*) Making reference to the classification system existing in California under Proposition 13, *Allegheny* notes it need not decide whether the county assessment method would stand on a different footing if it were the law of the state, generally applied, instead of an aberrational enforcement policy. (*Id.* at p. 698, fn. 4 [102 L.Ed.2d at p. 344].) *Allegheny* characterizes the California system as "grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Ibid.*)

Since *Allegheny's* holding is grounded on the unequal treatment of taxpayers who—in the absence of a state classification system—were in the same class, it does not undermine *Amador's* holding. (*R.H. Macy & Co. v. Contra Costa County* (1990) 226 Cal. App.3d 352, 363-365 [276 Cal.Rptr. 530], review den; *Nordlinger v. Lynch* (1990) 225 Cal. App.3d 1259, 1274, 1277 [275 Cal.Rptr. 684], review den.)

Amici curiae emphasize the *Amador* addresses only the facial constitutionality of the taxation system, whereas this case presents a challenge to the system as applied, warranting, at a minimum, an evidentiary hearing. However, *Amador* specifically cites an example where there would be a disparity between a property owner who purchased in 1975 as opposed to 1977, based on acquisition values of $40,000 and $80,000 respectively, for comparable properties. *Amador* thus recognized the likely disparities arising from the system as applied in an inflationary real estate market, and found no constitutional violation.[5] (Accord, *R.H. Macy & Co. v. Contra Costa County, supra*, 226 Cal. App.3d at pp. 361-362.) Indeed, an inflationary market is part of the rationale underlying the change from current value to acquisition value system—i.e., as stated in *Allegheny*, to protect property owners from being taxed on "unrealized paper gains" in value.

We note in the lengthy amici curiae briefing in opposition to the constitutionality of Proposition 13, policy arguments are presented as to the unfairness of the taxation system in terms of its impact on different socio-economic groups, and as to the ever-widening tax disparity between comparable properties with the passage of time.[6] Since the system was determined in

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[5]The dissent in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal. 3d at pages 251-255, also contains a lengthy analysis of the anticipated tax disparities which would arise from inflation of property values.

[6]In contrast, amici curiae in support of the constitutionality of Proposition 13 point to its careful balance between the goals of

Amador to be premised on a rationally based classification system to satisfy constitutional equal protection requirements, these arguments regarding the wisdom of the system are for the legislature not this court.

RIGHT TO TRAVEL

(3a) Northwest Financial's assertion that Proposition 13 infringes on the constitutional right to travel was also rejected in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at page 237. *Amador* rejects an argument the taxation system impaired the constitutional right to travel by requiring nonresidents or newly arrived residents to pay greater property taxes than established residents, thereby deterring property owners from moving to another location. *Amador* reasons that the change from a current value to acquisition value method would benefit all property owners, past and future, resident and nonresident, by reducing inflationary costs in assessments, limiting tax rates, and permitting the taxpayer to predict future tax liability. Under the former system, prospective purchasers arguably might have been deterred from purchasing (and thereby traveling) because of the unpredictable nature of future property tax liability resulting from unlimited inflationary pressures. Travel would be inhibited to no greater extent by the new system, establishing a more fixed and stable measure than that imposed by the former system of unconstrained

tax limits (the 1 percent cap), tax certainty (limits on increases in assessed valuation), and stable revenue local governments (reassessment upon change of ownership).

property taxation based on current values. (*Id.* at pp. 237-238.)

(4) A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right. (*Attorney General of N.Y. v. Soto-Lopez* (1986) 476 U.S. 898, 903 [90 L.Ed.2d 899 905, 106 S.Ct. 2317].) When a classification drawn by a state—such as a distinction between older and newer residents—burdens the right to migrate, the state must come forward with a compelling justification for the classification. (*Id.* at p. 904 [90 L.Ed.2d at p. 906].) The right to travel protects residents of a state from being disadvantaged or treated differently, simply because of the timing of their migration, from other similarly situated residents. *(Ibid.)*

(3b) Northwest Financial's argument that the taxation system here discriminates against nonresidents or newer residents in favor of older residents, mischaracterizes the system. The taxation system, including its rollback feature for pre-1975 purchasers, differentiates between property purchasers, regardless of their residency. Both longtime residents, new residents and nonresidents are subjected to the same "acquisition value" system—i.e., after 1975, a longtime resident who purchases real property, a new resident who comes into the state and purchases property, and a resident of another state who purchases California property, are all taxed based on acquisition value., Similarly, residents and nonresidents who purchased property before 1975 are all given the same "rollback" benefit. As explained in *Amador*, the

change from a current value to an acquisition value method benefits all property owners, past and future, resident and nonresident. Since Proposition 13 does not create a classification premised on residency or the length of residency in the state, we are not faced with the issue of whetherthe classification is justified by a compelling state interest.[7] (Accord, *R.H. Macy & Co. v. Contra Costa County, supra,* 226 Cal.App.3d at pp. 367-369; *Nordlinger v. Lynch, supra,* 225 Cal.App.3d at p. 1281.)

Amici curiae argue that Proposition 13 also infringes on travel within the state, since property owners will be reluctant to sell and move because of higher taxes on their newly purchased property. As indicated in *Amador*, the acquisition value system carries the benefit of predictability of future tax bills, and in this respect could encourage travel more than the former current value system which has no such predictability. We conclude the connection between an increased tax burden arising from sale and purchase of real property, is too tangential to the right to move freely within the state to be viewed as a constitutional infringement on

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[7]Northwest Financial asks us to reevaluate *Amador's* rejection of the right to travel argument based on its perception of *Amador* as using a minimum scrutiny, rather than heightened scrutiny, test for infringement on the right to travel. Although *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra,* 22 Cal. 3d at pages 238, compares the arguable impact on travel between the old current value taxation system and the new acquisition value system, we do not construe the opinion as finding the system infringed on the right to travel thereby requiring scrutiny of the governmental purpose behind the classification. Since the system does not classify based on rsidency, it does not impact the right to travel in this regard.

the right to travel.[8] (Cf. *CEEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 331 [118 Cal.Rptr. 315].)

DISPOSITION

The judgment is affirmed.

Wiener, Acting P. J., and Benke, J., concurred.

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[8]Amici curiae Ajalat & Polley assert the taxation system violates the Commerce Clause by virtue of its impact on commercial property. As recognized by Ajalat & Polley, Northwest Financial's appeal presents no allegations pertaining to the impact on commerce, and we need not reach the issue.

Fourth Appellate District, Division One,
No. D011121
S021146

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
JUL 11 1991
Robert Wandruff Clerk
Deputy

NORTHWEST FINANCIAL INCORPORATED,
Appellant

v.

STATE BOARD OF EQUALIZATION AND SAN DIEGO COUNTY Et Al.,
Respondents

Appellant's petition for review DENIED.
Kennard, J. is of the opinion the petition should be granted.

LUCAS

Chief Justice

APPENDIX B

ARTICLE 13A, CALIFORNIA CONSTITUTION
(Proposition 13)

§1. Ad valorem tax on real property; maximum amount; application

Section I. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(Added June 6, 1978. Amended June 3, 1986.)

§ 2. Full cash value; reassessment; newly constructed property; seismic safety; value and location of replacement dwelling; full cash value base; change in ownership; family transfers

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value

of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local

affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this state. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include *** any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to severely disabled person.

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

(e) Notwithstanding any other provision of this section, the Legislature shall provide that the base-year

value of property which is substanitally damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property, within the same county, that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

This subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base-year values for the 1985-86 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse which take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) For puposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their cjildren, as defined by the Legislature, and the purchase or transfer of the first $1,000,000 of the full cash value of all other real property between parties and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(i) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is

completed, on or after the effective date of the amendment.

(Added) June 7, 1978. Amended No. 7, 1978; Nov. 4, 1980; June 8, 1982; June 5, 1984; Nov. 6, 1984; June 3, 1986; Initiative Measure, Nov. 4, 1986; Nov. 4, 1986; Nov. 8, 1988; S.C.A. 37 (Prop. 110), approved June 5, 1990.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FILED
Robert H. Trammell, Clerk
SEP 14 1989
BY K. DERBY
Deputy

NORTHWEST FINANCIAL, INC., INC., Plaintiff, v. STATE BOARD OF EQUALIZATION and SAN DIEGO COUNTY, Defendants.	Case No. 611092 ORDER SUSTAINING DEMURRER OF SAN DIEGO COUNTY AND THE DEMURRER OF THE STATE BOARD OF EQUALIZATION WITHOUT LEAVE TO AMEND AND DIRECTING ENTRY OF JUDGMENT

The demurrer to complaint of San Diego County and the demurrer of the State Board of Equalization to complaint, both with regard to the above-referenced action, came on regularly for hearing on July 27, 1989, at 9:00 a.m. in Department 35 of the above-entitled court before the Honorable Herbert Hoffman, Judge Presiding. Defendant San Diego County appeared by its counsel, Lloyd M. Harmon, Jr., County Counsel, by Leonard W. Pollard, II, Deputy, and the State Board of Equalization appeared by its counsel John K. Van De Kamp, Attorney General, by Arthur C. De Goede,

Assistant Attorney General, and no one appeared for plaintiff Northwest Financial, Inc. The court, having reviewed the moving papers and files herein, and being fully advised in the premises, finds that the California Supreme Court case of Amador Valley Joint Union High School District v. State Board of Equalization (1978) 22 Cal.3d 208, and particularly the second paragraph at page 235, resolves the issue raised herein and "Proposition 13" is not violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the demurrer of San Diego County to complaint and the demurrer of the State Board of Equalization to complaint herein are sustained without leave to amend.

IT IS FURTHER ORDERED, that the complaint herein is dismissed and judgment is to be entered in favor of defendant San Diego County and defendant State Board of Equalization.

DATED: SEP 14 1989

HERBERT B. HOFFMAN

JUDGE OF THE SUPERIOR COURT

Presented by

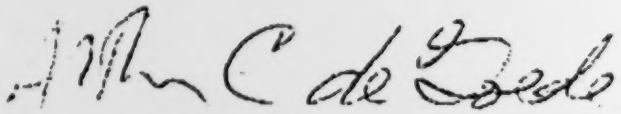
LLOYD M. HARMON, JR., County Counsel

By

LEONARD W. POLLARD, II, Deputy
Attorneys for Defendant County of San Diego

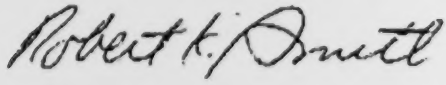
Approved as to form and content:

JOHN K. VAN DE KAMP, Attorney General

By 

ARTHUR C. DE GOEDE, Assistant Attorney General
Attorneys for the State Board of Equalization

SHANNAHAN & FITZGERALD

By 

ROBERT K. SMITH, Esq.
Attorneys for Northwest Financial, Inc.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on October 9, 1991, I served the within *Petition For Writ Of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original and forty copies)

Office of the County Counsel
Pollard, Leonard
1600 Pacific Highway
Room 355
San Diego, California 92101

Office of the Attorney General
De Goede, Arthur
3580 Wilshire Boulevard
Suite 900
Los Angeles, California 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 9, 1991, at Los Angeles, California.

Betty J. Malloy
(Original signed)

Supreme Court, U.S.
FILED
NOV 7 1991
OFFICE OF THE CLERK

No. 91-614

In The

Supreme Court of the United States

October Term, 1991

NORTHWEST FINANCIAL, INC.,

Petitioner,

v.

STATE BOARD OF EQUALIZATION AND SAN DIEGO COUNTY,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California

BRIEF OF RESPONDENT STATE BOARD OF EQUALIZATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 91-614

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NORTHWEST FINANCIAL, INC.,

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v.

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BRIEF OF RESPONDENT STATE BOARD OF EQUALIZATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The petition for certiorari should be denied because it lacks a sufficient factual foundation. There is an inadequate record in this case to support a challenge to Proposition 13, either under equal protection or the right to travel. The petition for certiorari is, in effect, a request for an advisory opinion because of its lack of a factual foundation.

In addition, respondent Board of Equalization (hereafter "Board") believes certiorari should be denied on the

merits because Proposition 13 raises no true equal protection or right to travel issues. This Court, however, on October 7, 1991, granted certiorari in *Nordlinger v. Hahn, et al.*, United States Supreme Court No. 90-1912, wherein the constitutionality of Proposition 13 was challenged under the equal protection clause of the Fourteenth Amendment and under the constitutional right to travel. The Board will not repeat the arguments it made as Amicus Curiae in *Nordlinger* in opposition to the granting of certiorari.

ARGUMENT

THE PETITION SHOULD BE DENIED BECAUSE PETITIONER DOES NOT STATE SUFFICIENT FACTS TO RAISE EITHER THE EQUAL PROTECTION CLAUSE OR THE CONSTITUTIONAL RIGHT TO TRAVEL

In challenging Proposition 13, petitioner seeks an advisory opinion based on speculation because it seeks to raise federal constitutional issues without a sufficient factual record from the court below. The only "fact" which the California Court of Appeal had before it was that petitioner, a Nevada corporation, purchased residential property in California and under Proposition 13 this property was reassessed upon the change of ownership. The immediate result of the reassessment was that property taxes on petitioner's property were higher than the property taxes for the previous owner. The former owner had been assessed at $175,839 and the petitioner's property was assessed at its purchase price of $730,000.

There is no equal protection issue that arises from this fact because it was not shown at trial, nor alleged herein, that the difference between the value of the same property when owned by the former owner and the value when purchased by petitioner was discriminatory. Absent from the record is any alleged fact which supports a conclusion that the assessment of petitioner's property differed in any way from the assessment of any comparable property. Nor does petitioner present a single fact that it has been treated differently than other California residents and property owners. Assuming that the fact alleged by petitioner is true, it is not sufficient to raise an equal protection issue.

Petitioner is asking this Court to speculate that the facts of the *Nordlinger* case are also applicable to petitioner. The record below is totally inadequate to support such a conclusion. Petitioner is asking this Court to assume facts, which facts are not pled and are not in evidence, to arrive at the conclusion that petitioner requests. In light of the severe factual deficiencies of this petition, it should be denied. Precisely these same issues are presented in *Nordlinger*, but upon a better record than in this case. Since this Court is reviewing *Nordlinger* on the merits, it has no need to take another case presenting the same issues but which is based upon a poorly developed record.

In addition, there is an insufficient factual foundation to raise a denial of the petitioner's alleged constitutional right to travel. Although the textual source of the constitutional right to travel, or, more precisely, "the right to free interstate migration," is not entirely clear *Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986), the

right has not been applied by this Court to corporations. Clearly, if the textual source is one of the privileges and immunities clauses (see *id.*), it would not apply to corporations. *Western & Southern L.I. Co. v. Bd. of Equalization*, 451 U.S. 648, 656 (1981). In the *Nordlinger* case, which has already been accepted by this Court for review of the right to travel argument on its merits, this issue is presented by an individual taxpayer. There is no need for this Court to grant the petition for certiorari in this case as well.

Even if corporations have a constitutionally protected right to travel, there is no allegation here and no facts below indicating any violation of the right in the purchase of the residential piece of property in California. There has been no showing that property taxes are higher in California than they are in Nevada or are imposed in such a way to inhibit the ability to move.

The only evidence below, and offered here, is that the residential property purchased by the petitioner corporation had higher property taxes after purchase than were the former owner's property taxes. There is no evidence below that petitioner was treated any differently than current residents of California, corporate or individual.

Such an inadequate factual foundation demands denial of this petition. The petitioner herein seeks to ride the coattails of the *Nordlinger* facts, which will be reviewed on the merits. To the extent that those facts are the basis of this petition, it should be denied and the *Nordlinger* case, not this case, should be the only case decided on the *Nordlinger* record.

CONCLUSION

Petitioner has invited this Court to decide constitutional issues without first having established an adequate record below. This Court should refuse the invitation and deny the petition for writ of certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
NOV 6 1991

No. 91-614

In The

Supreme Court of the United States

October Term, 1991

NORTHWEST FINANCIAL, INC.,

Petitioner,

v.

STATE BOARD OF EQUALIZATION and SAN DIEGO COUNTY,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California Fourth Appellate District, Division One

RESPONDENT COUNTY OF SAN DIEGO'S MEMORANDUM IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Northwest Financial, Inc. (hereinafter "Northwest"), timely filed this Petition for Writ of Certiorari, seeking review of a California Court of Appeal decision reported at 229 Cal.App.3d 198. The California Supreme Court denied review of the Court of Appeal decision.

STATEMENT OF THE CASE

This case arose as the result of a real property purchase by Northwest. On November 30, 1987, Northwest, a Nevada corporation, purchased a single family residence in La Jolla, California. La Jolla is located in the County of San Diego (hereinafter "County"). The purchase price was $730,000.

In accordance with article XIIIA of the California Constitution, popularly known as "Proposition 13," the County assessed and taxed Northwest's real property based upon the purchase price. The valuation and tax base of the previous owner had been $175,839.

Northwest then brought suit in state court based upon this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County* (1989) 488 U.S. 336 [102 L.Ed.2d 688, 109 S.Ct. 633], (hereinafter "*Allegheny*"). (Pet., at 3.) Northwest sued both the County as well as the California State Board of Equalization (hereinafter "State Board"), seeking a partial tax refund and to declare Proposition 13 invalid on its face as violative of the United States Constitution's guarantees of equal protection and the right to travel.

The trial court sustained the demurrers of the County and the State Board without leave to amend, and directed entry of judgment in their favor. (Pet., App. D.)

On appeal, the California Court of Appeal affirmed. (Pet., App. A.) The California Supreme Court denied review of the Court of Appeal decision. (Pet., App. B.)

IF THIS PETITION FOR WRIT OF CERTIORARI IS GRANTED, THIS CASE SHOULD BE CONSOLIDATED WITH *NORDLINGER V. HAHN*

THE *NORDLINGER* CASE MAY NOT BE DISPOSITIVE

This Court has already granted certiorari in a case which is procedurally and factually similar to this case. (*See, Nordlinger v. Hahn* (U.S. Oct. 7, 1991) No. 90-1912.) In view of these circumstances, if this Court grants the Petition for Writ of Certiorari, this case should be considered with the case of *Nordlinger v. Hahn, supra.* The only factual difference is that this case involves a non-resident purchaser.

CONCLUSION

For the reasons set forth above, if this petition for Writ of Certiorari should be granted, this case should be consolidated with *Nordlinger v. Hahn, supra.*

DATED: November 8, 1991

Respectfully submitted,

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